

NO. 23459

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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DEBORAH Y. MILLER, Plaintiff-Appellee

vs.

JOSEPH R. THAMES, Defendant-Appellant

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APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-DA NO. 99-1772)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, JJ.  
and Circuit Judge Nakea in place of Acoba, J., recused.)

Upon review of the record, it appears that: (1) a motion for reconsideration of the December 2, 1999 order of protection had to be filed by December 22, 1999, twenty days after the order was entered; see Hawai'i Family Court Rules (HFCR) Rule 59(g) (1977); (2) the time for filing a motion for reconsideration under HFCR 59(g) could not be extended by the family court; see HFCR 6(b) ("[The family court] may not extend the time for taking any action under Rules 59 (d), (f) and (g) [.]" ); (3) the extension of time until March 15, 2000 to file a motion for reconsideration was invalid; (4) the motion for reconsideration filed on March 15, 2000 was an untimely motion for reconsideration of the December 2, 1999 order that did not toll the time for appealing the December 2, 1999 order; see Hawai'i Rules of Appellate Procedure (HRAP), Rule 4(a)(4) (1985); (5) the notice of appeal filed on May 23, 2000 is an untimely appeal of the December 2, 1999 order; see HRAP 4(a)(1); and thus, (6) we lack jurisdiction to review the December 2, 1999 order;

see HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion).

It further appears that a timely appeal of the December 2, 1999 order was filed by Appellant on February 2, 2000 in No. 23128, but the appeal was dismissed on August 21, 2000 after Appellant failed to file an opening brief and failed to cure the default.

It finally appears that the notice of appeal filed on May 23, 2000 is also an untimely appeal of the April 20, 2000 order denying the March 15, 2000 motion for reconsideration inasmuch as an appeal of the April 20, 2000 order had to be filed by May 22, 2000; see HRAP 4(a)(1) and 26(a). We lack jurisdiction to review the April 20, 2000 order and we have no discretion to disregard the jurisdictional defect. HRAP 26(b). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 21, 2000.